# Title 13, Chapter 46, Independent Contractor Database Act

## 13-46-101.   Title.

This chapter is known as the "Independent Contractor Database Act."

## 13-46-102.   Definitions.

As used in this chapter:
(1)  "Accessing agency" means:
(a)  the department;
(b)  the Department of Workforce Services;
(c)  the Labor Commission; and
(d)  the State Tax Commission.
(2)  "Council" means the Independent Contractor Enforcement Council created in Section 13-46-201.
(3)  "Database" means the Independent Contractor Database created under this chapter.
(4)  "Department" means the Department of Commerce.

## 13-46-103.   Scope.

Nothing in this chapter may be construed as limiting or modifying the ability of an accessing agency or the attorney general to share information that is not part of the database, but is allowed to be shared by a law other than this chapter.

## 13-46-201.   Creation.

(1) (a)  There is created within the department the Independent Contractor Enforcement Council consisting of the following four members:
(i)  the executive director of the department or the executive director's designee;
(ii)  the executive director of the Department of Workforce Services or the executive director's designee;
(iii)  the commissioner of the Labor Commission or the commissioner's designee; and
(iv)  the chief information officer of the Department of Technology Services.
(b)  The following shall work cooperatively with the council:
(i)  the Department of Public Safety; and
(ii)  the State Tax Commission.
(2)  The executive director of the department is chair of the council.
(3) (a)  A majority of the council members constitutes a quorum.
(b)  A vote of the majority of the council members present when a quorum is present is an action of the council.
(4)  The council shall meet at the call of the chair, except that the chair shall call a meeting at least quarterly.
(5)  The department shall staff the council.

## 13-46-202.   Duties of the council.

(1)  The council shall:
(a)  direct the design of a database described in Part 3, Independent Contractor Database, so that the database may be accessed by one or more accessing agencies by no later than July 1, 2009;
(b)  beginning July 1, 2009, meet quarterly:
(i)  with:
(A)  the attorney general or a designee of the attorney general;
(B)  the chair of the State Tax Commission or a designee of the chair; and
(C)  the commissioner of the Department of Public Safety or the commissioner's designee; and
(ii) (A)  to review the most recent results from the database; and
(B)  to coordinate regulatory and law enforcement efforts; and
(c)  subject to Subsection (2), report by no later than November 30 of each year concerning the effectiveness of the database to:
(i)  the governor; and
(ii)  the Business and Labor Interim Committee.
(2)  The council may study how to do the following:
(a)  reduce costs to the state resulting from the misclassification of workers as independent contractors;
(b)  extend outreach and education efforts regarding the nature and requirements of independent contractor status;
(c)  promote efficient and effective information sharing amongst the member agencies; and
(d)  coordinate with the Uninsured Motorist Identification Database.
(3) (a)  The council shall make a report required by this Subsection (3) to the Business and Labor Interim Committee by no later than November 30 of 2008, 2009, 2010, and 2011.
(b)  As part of the report required by this Subsection (3), the chairs of the Business and Labor Interim Committee shall

provide an opportunity to the following to report to the Business and Labor Interim Committee on the usefulness of the database:

(i) each accessing agency;

(ii) the attorney general; and

(iii) the Department of Public Safety.

(c) The council shall include in the report required by this Subsection (3):

(i) an update on the design, implementation, and operation of the database;

(ii) findings regarding the nature and extent of the misclassification of workers as independent contractors in this state;

(iii) the results of regulatory and enforcement activities related to the database; and

(iv) recommended legislative changes, if any, related to Subsection (2) or this Subsection (3).

## 13-46-301. Creation.

(1) (a) By no later than July 1, 2009, the department shall administer a database:

(i) designed by the council to share data amongst accessing agencies, the attorney general, and the Department of Public Safety; and

(ii) to be used by an accessing agency to identify when a person:

(A) holds that person out as an independent contractor; or

(B) engages in the performance of work as an independent contractor not subject to an employer's right to control the person.

(b) Notwithstanding Subsection (1)(a), the department may contract in accordance with this chapter with a person other than the department:

(i) to the extent necessary to design, implement, or operate the database; and

(ii) in a manner consistent with Title 63G, Chapter 6, Utah Procurement Code.

(c) If the department contracts with a person who is not a government agency to operate the database, the department:

(i) shall monitor the operations under the contract; and

(ii) ensure that the contract allows for termination of the contract if the person fails to operate the database in accordance with the contract and this chapter.

(2) An accessing agency shall cooperate with the department to provide information:

(a) to be included in the database; and

(b) to the extent that disclosure of the information is otherwise permitted by law other than this chapter.

(3) The database shall include a process to compare the information in the database at least monthly to:

(a) identify a worker who may be misclassified as an independent contractor;

(b) promote employer compliance with state and federal laws related to:

(i) withholding taxes;

(ii) making payments for Social Security, Medicare, and unemployment insurance;

(iii) providing the proper level of workers' compensation insurance;

(iv) preventing insurance fraud;

(v) paying overtime and minimum wages; and

(vi) including a worker in an employee benefit program;

(c) reduce employer intentional misclassification of a worker as an independent contractor; and

(d) identify identity theft.

## 13-46-302. Confidentiality of information in the database.

(1) An accessing agency shall designate who within that accessing agency may access the database.

(2) (a) A person not designated under Subsection (1) may not use the database.

(b) An individual designated under Subsection (1) may access the database only for a purpose provided for in Section 13-46-301.

(3) The database, and the information in the database, is considered a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, except that an accessing agency may disclose the information to a person who is not a person designated under Subsection (1):

(a) to the extent necessary to take an administrative action by an accessing agency;

(b) to the extent necessary to prosecute a criminal act; or

(c) to the extent that the information is:

(i) obtainable from a source other than the database; and

(ii) permitted to be disclosed by a law other than this chapter.

## 13-46-303. Liability.

The state and a person with whom the department contracts under Section 13-46-301 is not liable to any person for:

(1) the design, implementation, or operation of the database as provided in this chapter; or

(2) the collection and disclosure of information in the database as provided in this chapter.